

APPENDIX

A

APPENDIX A TO THE REPORT OF LAWRENCE FERRARA

Summary of a comparative analysis of the Deposit Copy of "Bright Red Chords" and the 2010 release version of "Bright Red Chords"

The overall structures in the deposit copy and the 2010 released version of "Bright Red Chords" are charted immediately below.

"BRIGHT RED CHORDS": DEPOSIT		"BRIGHT RED CHORDS": 2010	
<u>Structural Chart</u>		<u>Structural Chart</u>	
0:00	Count off (1 bar)		
0:02	Introduction (8 bars)	0:00	Introduction (12 bars)
0:17	Verse 1 (8 bars)	0:24	Verse 1 (8 bars)
0:32	Chorus 1 (8 bars)	0:40	Chorus 1 (8 bars)
0:48	Re-intro (4 bars)	0:56	Re-intro (4 bars)
0:55	Verse 2 (8 bars)	1:04	Verse 2 (8 bars)
1:10	Chorus 2 (8 bars)	1:20	Chorus 2 (8 bars)
1:26	Bridge (4 bars)	1:36	Bridge (4 bars)
1:33	Solo (8 bars)	1:44	Gtr. Solo (8 bars)
1:48	Chorus 3 (8 bars)	2:00	Chorus 3 (12 bars)
2:04	Outro (9 bars)	2:24	Outro (8 bars)
(Ends approximately at 2:28)		(Ends approximately at 2:44)	

-The deposit copy includes a 1 bar count off before the opening of the Introduction that is not present in the released version;

-The deposit copy adds vocal utterances in the Introduction ("oh baby," "c'mon feel it," "ah/oh yeah") that are not present in the released version;

-The Introduction in the deposit copy is 8 bars, but the Introduction in the released version is 12 bars;

-Chorus 3 in the deposit copy is 8 bars, but Chorus 3 in the released version is 12 bars;

-The Outro in the deposit copy is 9 bars, but the Outro in the released version is 8 bars;

-The duration of the deposit copy is approximately 2:28 (2 minutes and 28 seconds), but the duration of the released version is 2:44;

-The deposit copy has a stripped-down instrumentation as compared with the released version: it uses only 1 guitar, and no cowbell or tambourine are present in the deposit copy;

-The instrumentation in the Introduction in the deposit copy consists of 8 bars of *guitar*, but the instrumentation in the Introduction in the released version consists of 4 bars of drums and cowbell followed by 8 bars of guitar, drums and cowbell;

-The vocal melodies in the deposit copy include some different notes as compared with the released version;

-The guitar soloist plays some different notes during the guitar solo section in the deposit copy as compared with the released version;

-There is a *brief* full stop during the guitar solo at 1:40 in the deposit copy, but not during the guitar solo in the released version;

-The deposit copy ends on a sustained V chord but the released version ends on a sustained IV chord.

Bright Red Chords

(D major)

INTRO 0:02

5 D⁵ F^{#5} G⁵ A⁵ D⁵ F^{#5} G⁵ E⁵

(gtr.) Oh, ba - by (gtr.) C'-mon feel it

5 D⁵ F^{#5} G⁵ A⁵ D⁵ F^{#5} G⁵ E⁵

(sim.)

VERSE 1 0:17

9 D⁵ F^{#5} G⁵ A⁵ D⁵ F^{#5} G⁵ E⁵ Ah, yeah_ I put the need-le in the

groove (a) to a song that fits the mood I watch the re - cord spin a-

13 D⁵ F^{#5} G⁵ A⁵ D⁵ F^{#5} G⁵ E⁵

round in - to a wall of sound_

CHORUS 1 0:32

17 G A G A

Bright red chords on jet black vi - nyl Dan-cin' to the beat, the mu-sic is_

21 G A G A

pri-mal Bright red chords, jet black vi - nyl Dan-cin to the beat_ the mu-sic is_

RE-INTRO 0:47

25 D⁵ F^{#5} G⁵ A⁵ D⁵ F^{#5} G⁵ E⁵

pri - mal_ It hits my hips be-fore my

VERSE 2 0:55

29 D⁵ F^{#5} G⁵ A⁵ D⁵ F^{#5} G⁵ E⁵

mind my feet are wor-kin' o-ver- time Shoes slap-pin' on the

33 D⁵ F^{#5} G⁵ A⁵ D⁵ F^{#5} G⁵ E⁵

floor C'-mon, let's rock some more_

CHORUS 2 1:11

37 G A G A

Bright red chords on jet black vi - nyl Dan - cin' to the beat, the mu - sic is

41 G A G A

pri - mal Bright red chords, jet black vi - nyl Dan - cin to the beat the mu - sic is

BRIDGE 1:26

45 G G# A Bb B

Drenched in sweat, but we ain't done yet, We'll be drenched in sweat, but we ain't done

SOLO 1:33

49 D N.C. A D F#5 G5 A5 A

yet (gtr.)

53 D N.C. A D F#5 G5 E

CHORUS 3 1:48

57 G A G A

Bright red chords on jet black vi - nyl Dan - cin' to the beat, the mu - sic is

61 G A G A

pri - mal Bright red chords, jet black vi - nyl Dan - cin to the beat the mu - sic is

OUTRO 2:04

65 D5 F#5 G5 A5 D5 F#5 G5 E5

pri - mal Mm

69 D5 F#5 G5 A5 D5 F#5 G5 E5 A

yeah C' - mon feel it

APPENDIX B

Audio Exhibit 1: Sound recordings in their entirety

Track	Song title
1	"Bright Red Chords" Deposit Copy (2008)
2	"Bright Red Chords" from <i>Nagasha</i> EP (2009)
3	"Bright Red Chords" from <i>Space Camp</i> (2010)
4	"Domino" from <i>Who Are You</i> (2011)
5	"Domino" single release (2011)
6	"Rush" (single release by Big Audio Dynamite, 1981)
7	"Out o' Sight" (The Soul Setters, 1965)
8	"Fire" (from <i>Energy</i> by The Pointer Sisters, 1978)
9	"It Must Be Magic" (from <i>It Must Be Magic</i> by Teena Marie, 1981)
10	"When You're Looking Like That" (from <i>Coast to Coast</i> by Westlife, 2000)
11	"I Don't Think So" (from <i>Kelis Was Here</i> by Kelis, 2006)

Audio Exhibit 2: Excerpts from sound recordings

Track	Song titles ("BRC" = "Bright Red Chords")
1	"Rush" and "BRC" bars 1-4 in Verse 1 side-by-side
2	"Rush" and "BRC" bars 1-8 in Verse 1 side-by-side
3	"Fire" and "BRC" bars 1-4 in Verse 1 side-by-side
4	"BRC", "Rush", "Domino", "Out o' Sight", "Fire", and "It Must Be Magic" bars 1-4 in Verse 1 side-by-side
5	"I Don't Think So" and "BRC" bars 1-2 in Verse 1 side-by-side
6	"I Don't Think So" and "BRC" bars 1-4 in Verse 1 side-by-side
7	"I Don't Think So" and "Domino" bars 1-2 in Verse 1 side-by-side
8	"I Don't Think So" and "Domino" bars 1-4 in Verse 1 side-by-side

APPENDIX

C

LAWRENCE FERRARA, Ph.D.
 PROFESSOR OF MUSIC
 DIRECTOR EMERITUS
 MUSIC AND PERFORMING ARTS PROFESSIONS
 THE STEINHARDT SCHOOL
 NEW YORK UNIVERSITY

Educational Background

B.A.	Music	Montclair State University
M.M.	Music	Manhattan School of Music
Ph.D.	Music	New York University

Teaching Background

1979-84	Assistant Professor of Music	New York University
1984-92	Associate Professor of Music	New York University
'92-present	Professor of Music	New York University
'95-2006	Professor of Music and Department Chair	New York University
2006-	Professor of Music and Director Music & Perf Arts	New York University
2011 (Sept.)-present	Professor of Music and Director Emeritus	New York University

Selected Professional Activities

New York: American Musicological Society GNY, peer-reviewed presentation on the musicological issues and implications in Repp v Webber, hosted by Department of Music, Columbia University (April 27, 2013)

New York: 2013, invited music copyright expert presentation at Columbia Law School, class on Federal Courts Litigation: Trademark and Copyright (April 17, 2013)

- Cambridge,
Mass: 2013, invited lecturer in music copyright at Harvard Law School,
class on Music and Media law (February 5, 2013)
- New York: 2012, invited music copyright expert presentation at Columbia Law
School, class on Federal Courts Litigation: Trademark and Copyright
- Cambridge,
Mass: 2012, invited lecturer in music copyright at Harvard Law School,
class on Music and Media law
- Sweden: 2011, interviewed (in New York) and featured in the Swedish TV series,
"The Story Behind the Hitsong," regarding music copyright
- Cambridge,
Mass: 2011, invited lecturer in music copyright at Harvard Law School,
class on Music and Media law
- New York: 2010, invited presenter and moderator of a panel on sampling and music
copyright for The Copyright Society of the United States, New York
Chapter
- New York: 2010, invited music copyright expert presentation at Columbia Law
School, class on Federal Courts Litigation: Trademark and Copyright
- Montclair,
NJ: 2010, invited to give the Inaugural Jack Sacher Memorial Research
Presentation for the opening of the new John Cali School of Music at
Montclair State University on music copyright
- New York: 2010, invited lecture on music copyright in a dialogue with Academy
Award winner, F. Murray Abraham, for The Pathfinders Series at The First
Presbyterian Church of New York City
- New York: 2008, invited music copyright expert presentation at Columbia Law
School, class on Federal Courts Litigation: Trademark and Copyright
- Denmark: 2007, interviewed in documentary film on music copyright (*Copy Good,
Copy Bad*)
- Ireland: 2007, interviewed on Irish radio regarding music copyright
- New York: 2007, Opening and Closing Speaker for a Conference co-sponsored by
The New York Philharmonic and the Finnish Consulate on Music Learning
and Performance in Finland

- New York: 2006, invited panelist at the CMJ Conference at Lincoln Center regarding music copyright
- New York: 2006, invited panelist at the Remix Conference regarding music copyright
- New York: 2006, invited presentation to the New York Institute for the Humanities regarding music copyright
- New York: 2006, invited Keynote Address for The Mastery of Music Teaching Conference sponsored by The Metropolitan Opera Guild and The New York Philharmonic
- Washington
D.C.: 2005, invited panelist/presenter at the Future of Music Policy Summit regarding music copyright
- New York: 2005, invited group discussion leader at the United Nations regarding rhythm in music of multiple cultures as part of the U.N.'s World Summit on the "Information Society" and the United Nations Information and Communications Technology Task Force
- Cambridge: 2005, invited panelist/presenter at Harvard Law School's Berkman Center, national conference regarding technology and intellectual property
- New York: 2005, invited music copyright expert presentation at Columbia Law School, class on Federal Courts Litigation: Trademark and Copyright
- L.A.: 2005, invited lecture regarding music copyright in Los Angeles for NYU Alumni event
- Orlando: 2005, invited lecture regarding music copyright in Orlando, Florida for an NYU Alumni event
- Hawaii: 2004, invited workshop presentation and session chair regarding methodology inherent in the analysis of a J. S. Bach organ prelude for the International Conference on Arts and the Humanities
- Norway: 2003, invited series of lectures on music theory and analysis co-sponsored by the Music Theory and Composition Departments of the Norwegian Music Academy and the Department of Philosophy of the University of Oslo
- New York: 2001, invited chair of a panel at The United Nations regarding "Music within a Global Context."

Pianist Performed solo recitals and performances as an accompanist and soloist in the United States and Europe as well as solo performances on radio and television. Recordings for Orion Master Recordings and Musique International. In previous years, pianist for musical theatre shows, the New Jersey State Opera, accompanist to internationally acclaimed singers, and session pianist in pop styles.

At New York University, Dr. Ferrara was The Director of Music Performance Programs from 1980-1985, Director of Ph.D. Programs from 1986-1995, and Chair of the Department of Music and Performing Arts from 1995 - 2005. From 2006-2011, he was Director of all studies (undergraduate through Ph.D.) in Music and the Performing Arts in NYU's Steinhardt School. Dr. Ferrara was named Director Emeritus in 2011 and continues on the full-time faculty as a member of the music theory and music history faculties.

Dr. Ferrara sits on the Editorial Board of the journals, *Arts Praxis* (NYU) and *Music and Moving Image* (University of Illinois Press), on the board of Editorial Consultants for the journal, *Philosophy of Music Education Review* (Indiana University Press), was Associate Editor of the *Journal of Qualitative Evaluation in the Arts*, and a member of the editorial board for the *New York University Education Quarterly*. He was a co-P.I. on federal and foundation grants for research in performing arts medicine and Vice President and co-founder of a non-profit federation of physicians and artists fostering research that bridges the arts to medicine.

Awards

1972	Stoekel Fellowship, Yale University Graduate School of Music, Chamber Music
1985	Presidential Research Fellowship, NYU
1988	Federal Grant for Research
1989	Federal Grant for Research renewed
1996	Daniel E. Griffiths Award for work regarding Arthur Schopenhauer's theory of music published by Cambridge University Press, 1996.

Professional Organizations

American Musicological Society

New England Conference of Music Theorists

Society for Music Theory

Publications: Books

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| Ferrara, Lawrence | <i>Philosophy and the Analysis of Music: Bridges to Musical Sound, Form and Reference</i> (Greenwood Press) 1991 |
| Ferrara, Lawrence and
Kathryn E. Ferrara | <i>Keyboard Harmony and Improvisation</i> (Excelsior Music Publishers) 1986 |
| Phelps, Roger, Lawrence
Ferrara and Thomas
Goolsby | <i>Guide to Research in Music Education</i> , Fourth Edition.
(Scarecrow Press) 1993 |
| Phelps, Roger, Lawrence
Ferrara, <i>et al</i> | <i>Guide to Research in Music Education</i> , Fifth Edition
(Scarecrow Press) 2005 |

Courses Taught at NYU

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| Aesthetic Foundations of the Arts: | for Ph.D. students |
| Aesthetic Inquiry: | for Ph.D. students |
| Arts Heritage and Criticism: | for M.M. students |
| Classic Era Music, Analysis: | for M.M. students |
| Contemporary Music, Analysis: | for M.M. and Ph.D. students |
| Dissertation Proposal Seminar: | for Ph.D. students |
| Keyboard Harmony and Improvisation: | for B.M. students |
| Music Copyright, Landmark Cases: | for B.M. students |
| Music Criticism: | for M.M. students |
| Music History III, 19 th Century: | for B.M. students |
| Music History IV, 20 th & 21 st Century: | for B.M. students |

Music Performance Practices: for M.M. students

Music Reference & Research Methods: for M.M. and Ph.D. students

Music Theory and Analysis: for B.M. students

Seminar in Music Theory & Analysis: for M.M. and Ph.D. students

Music Copyright

Dr. Ferrara has been a music expert in music copyright infringement issues for more than twenty years, providing opinions for plaintiffs and defendants. He is an active music copyright consultant for record, music publishing, and motion picture companies, and for individuals in the United States and abroad. He has been a regularly invited guest lecturer in music copyright at Columbia University Law School and Harvard University Law School, a conference panelist sponsored by Harvard Law School, and a panel moderator for The Copyright Society of the United States.

Deposition and Trial Testimony in the last four years

- (1) Lessem v. Taylor et al in 2009;
- (2) Serendip v. Warner Bros. in 2009;
- (3) Kernel v. Mosley et al in 2010;
- (4) King et al v. Najm et al in 2010;
- (5) Batts et al v. Adams et al in 2011; and
- (6) Francescatti v. Germanotta et al in 2013.

Fee rate for Professional Services

- \$375 per hour for research, analysis, preparation of reports, and meetings plus any travel-related expenses
- \$475 per hour for deposition and trial testimony plus any travel-related time and expenses

APPENDIX D

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I reviewed a YouTube video of "Bright Red Chords".

(http://www.youtube.com/watch?v=eE-sVlr_9kw) The musical and lyrical composition in the "Bright Red Chords" video appears to be identical to the 2009 and 2010 released versions of "Bright Red Chords" with the exception of the duration of the Introduction. The duration of the Introduction in the "Bright Red Chords" video is 10 bars: 2 bars of drums followed by 8 bars with added guitar. The Introduction in the 2009 version of "Bright Red Chords" consists of 2 bars of drums followed by 4 bars with added guitar and the Introduction in the 2010 version of "Bright Red Chords" consists of 4 bars of drums followed by 8 bars with added guitar.

I reviewed a video version of "Domino" as well.

(<http://www.youtube.com/watch?v=UJtB55MaoD0>) The video version is identical to the album and "single" version of "Domino" with the exception that it appears to be slightly faster in tempo and the pitch appears to be slightly raised as compared with the album and "single" version of "Domino".